

SILVER MONUMENT MINERALS, INC.

IBLA 74-132

Decided January 7, 1974

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting an oil and gas lease offer drawn at a simultaneous drawing.

Affirmed.

Oil and Gas Leases: Applications: Generally--

Oil and Gas Leases: Applications: Drawings

An oil and gas lease offer successfully drawn at a noncompetitive lease simultaneous drawing is properly rejected when the offeror corporation neither files its qualifications nor files a reference to any existing record of its qualifications with the entry card.

Oil and Gas Leases: Applications: Generally--

Oil and Gas Leases: Known Geological

Structure--Oil and Gas Leases: Noncompetitive  
Leases

The drawing of an offer for a noncompetitive lease creates no vested rights in the offeror, and if lands embraced in the offer are designated as within a known geological structure before the issuance of a lease, the offer must be rejected as to those lands.

Administrative Practice--Rules of Practice:

Appeals: Generally

The Board of Land Appeals will not grant a request for oral argument when it does not appear that the Board's consideration of the case would be facilitated by such argument.

APPEARANCES: Clarence E. Hinkle, Esq., of Hinkle, Bondurant, Cox & Eaton, Roswell, New Mexico, for appellant.

OPINION BY MRS. THOMPSON

Silver Monument Minerals, Inc., has appealed from a decision of the New Mexico State Office, Bureau of Land Management, which rejected its noncompetitive oil and gas lease offer NM 19443.

Appellant's offer was successfully drawn for Parcel No. 84 in the simultaneous drawing held on September 12, 1973. The State Office, in a decision dated October 9, 1973, rejected the offer because a statement of corporate qualifications, or a reference to an existing record of corporate qualifications, did not accompany its entry card.

The applicable regulation, 43 CFR 3102.4-1, provides:

If the offeror is a corporation, the offer must be accompanied by a statement showing [corporate qualifications]. \* \* \* Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted.

In a series of cases this Board has held that this regulation is not discretionary; it prescribes mandatory rejection of an offer unaccompanied by a statement of corporate qualifications. Read & Stevens, Inc., 9 IBLA 67 (1973); The Polumbus Corp., 8 IBLA 84 (1972). Rejection is also mandatory for failure to accompany the entry card with a reference to a file, such as the appellant here had, containing already approved qualifications. American Mineral Petroleum Corp., 10 IBLA 185 (1973); Read & Stevens, Inc., supra. Failure to comply with the regulation is not excused, as appellant argues, by the fact that the entry card itself contains no place for either the statement of qualifications or the reference to a file number. Apollo Drilling & Exploration, Inc., 10 IBLA 81 (1973); Read & Stevens, Inc., supra.

Appellant contends that certain analyses were not made in those cases and that upon proper and complete analysis the requirements of the last sentence of 43 CFR 3102.4-1 do not compel rejection of its offer. It asserts those decisions are erroneous and should be reversed.

First, appellant argues that the language of the regulation, that reference to already filed qualifications "will be accepted," does not require that the entry card "must be accompanied by" the reference. Appellant continues that since no other party is adversely affected by its failure, this noncompetitive lease should be treated like competitive leases which have issued even though a proper qualifications statement was not filed with the bid. Okmar Oil Co., W 20183, etc. (January 26, 1970); Kimbark Associates, W 19713 (August 28, 1969). See Ashland Oil & Refining Co., W 11783 (Kansas) (August 13, 1968).

The comparison between application of the regulations to competitive and noncompetitive leases is not persuasive. Mandatory compliance with the regulation is essential for determining the priority of noncompetitive lease offers. The factor of priority in filing is lacking in the competitive lease situation, where high bid is the overriding criterion. North American Coal Corp., 74 I.D. 209, 211 (1967).

Appellant's next major contention is that section 17 of the Mineral Leasing Act requires the Bureau of Land Management to issue a lease to the number one drawee "who is qualified to hold a lease under this chapter." 30 U.S.C. § 226(c) (1970). It argues that it was "qualified" by the prior filing of its corporate qualifications statement, designated as file NM 0558400, so that no reference was required with its entry card, and the Bureau was required by law to issue it a lease. This argument ignores the provision of regulation 43 CFR 3112.3-1 that in order to be "qualified" for a simultaneous drawing lease one must comply with section 3102, which requires that the corporate qualifications statement, or a reference to a filed statement, "must accompany" the entry card. 43 CFR 3102.4-1. Without the reference to the file, Bureau personnel would not know whether or not the offeror was qualified. This is the purpose of the regulation. Appellant may meet the corporate requirements, but it is not qualified to hold a lease until it complies with the procedural requirement as well. Appellant's reasons for overruling the line of cases cited above are not persuasive and no further discussion of the additional arguments made by appellant is necessary. We see no basis for a different result in this case than in the other identical situations.

An independent ground for refusal to issue a lease exists for most of the tracts in Parcel No. 84. Effective September 9, 1973, just before the drawing in question, the Geological Survey placed these tracts within the James Ranch Field and four other unnamed

known geological structures. <sup>1/</sup> The Mineral Leasing Act provides that land within a known geological structure may only be leased by competitive bidding. 30 U.S.C. § 226(b) (1970). The fact that the designation of the tracts was reported to the Bureau of Land Management after the drawing does not help appellant; the date of ascertainment of the known geological structure, not the date of pronouncement, controls. 43 CFR 3100.7-3. The filing of any offer for a noncompetitive lease creates no vested rights in the offeror, and the offer must be rejected if the lands are found to be within a known geological structure at any time prior to the issuance of the noncompetitive lease. 43 CFR 3110.1-8; T. D. Skelton, 9 IBLA 322 (1973); Solicitor's Opinion, 74 I.D. 285 (1967). Appellant's offer to lease the affected tracts within Parcel No. 84 must be rejected for this reason also.

Appellant has requested that this Board grant oral argument pursuant to its discretionary authority, 43 CFR 4.25. Appellant in its brief has presented its reasons for reexamining the requirements of section 3102.4-1. These have been considered. We see no useful purpose for an oral argument, nor would the Board's consideration of the case be facilitated thereby. Therefore, the request for oral argument is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joan B. Thompson, Member

We concur:

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Edward W. Stuebing, Member

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Martin Ritvo, Member

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<sup>1/</sup> The following lands which are included in offer to lease NM 19443 are now within a known geological structure:

T. 23 S., R. 31 E., NMPM: Sec. 24: NW 1/4, N 1/2 SW 1/4, SE 1/4 SW 1/4; Sec. 28: E 1/2, E 1/2 W 1/2; Sec. 33: NE 1/4, NE 1/4 NW 1/4, S 1/2 NW 1/4, N 1/2 SE 1/4; Sec. 34: All.

T. 24 S., R. 31 E., NMPM: Sec. 6: SE 1/4 SE 1/4.

The remaining lands are not within a known geological structure:

T. 24 S., R. 31 E., NMPM: Sec. 7: Lots 1, 2, 3, 4, NE 1/4 NE 1/4, S 1/2 NE 1/4, E 1/2 W 1/2, SE 1/4.

